

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Monday, February 2, 2015
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 279 - RELATING TO REAL ESTATE BROKERS
AND SALESPERSONS.**

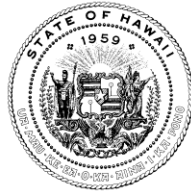
TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 279, Relating to Real Estate Brokers and Salespersons, and supports the measure and purpose of restricting a real estate licensee from preventing a prospective purchaser from retaining the services of a real estate broker or salesperson.

The Commission would also like to propose additional language to read:

- When the licensee, being a real estate broker or a real estate salesperson acting on behalf of the seller of real estate, acts in a manner that prevents, dissuades, or hinders a prospective purchaser of real estate from being able to retain the services of a real estate broker or real estate salesperson.

Thank you for the opportunity to provide testimony supporting House Bill No. 279 with suggested amendments.



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**PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015**

**MONDAY, FEBRUARY 2, 2015
2:00 P.M.**

**TESTIMONY ON HOUSE BILL NO. 279
RELATING TO REAL ESTATE BROKERS AND SALESPERSONS**

**TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No.279, Relating to Real Estate Brokers and Salespersons. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on this bill.

House Bill No. 279 adds a new basis for disciplinary action against a real estate broker or salesperson who acts in a manner that prevents a prospective

buyer from retaining a real estate broker or salesperson to represent the buyer in a real estate transaction.

RICO is aware that there may be instances where prospective buyers are prohibited from obtaining the services of a real estate broker or salesperson when purchasing real estate and agrees that such practices should be discouraged. However, the bill as currently drafted would be difficult to enforce without language clarifying the conduct that would give rise to disciplinary action. As such, RICO suggests replacing the phrase “acts in a manner that prevents” with “prohibits” to better specify the conduct that would trigger disciplinary action.

In addition, while the conduct House Bill No. 279 is intended to address often occurs in the context of a real estate broker or real estate salesperson acting on behalf of a seller, RICO recommends the Committee consider amending the language so that the proposed restrictions would apply to both purchasing and selling real estate brokers or real estate salespersons.

RICO would appreciate the opportunity to work with the Committee to further develop this bill’s language should the Committee decide to move this measure forward.

Thank you for the opportunity to testify on House Bill No. 279. I will be happy to answer any questions the members of the Committee may have.

February 2, 2015

LATE

The Honorable Angus McKelvey, Chair

House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 279, Relating to Real Estate Brokers and Salespersons

HEARING: Monday, February 2, 2015, at 2:00 p.m.

Aloha Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am Aron Espinueva, Government Affairs Analyst, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR offers **comments** on H.B. 279, which prohibits a real estate broker or salesperson for a seller of real estate from acting in a manner that prevents a prospective buyer from being able to retain a real estate broker or salesperson.

This bill proposes to prohibit a real estate broker or salesperson that is representing a seller of real estate from preventing a prospective buyer from retaining real estate representation.

Typically, most new condominium and single family home developments have policies that require that the prospective buyer's agent be present at the first visit and any future visits. If a buyer's agent is not present at the first visit with the client, the developer's brokerage may claim the entire transaction. In other words, if the buyer's agent wants to participate in the cooperating brokerage fee offered by the developer's agent for selling a unit in the development, they must accompany the client to the property at the first and subsequent visits. Not all developer's agent have this business model but many do, and the policy disclaimer is usually contained in their advertising and marketing materials for the project/property.

Some developer's agent will accept an alternative, such as permitting the prospective buyer's agent to phone ahead and preregister. Or, they may also acknowledge that the buyer is represented provided that the unaccompanied buyer presents the agents business card upon entry and before touring the model units. However, there are developer's agent that don't allow these exceptions or work-around.

If a buyer visits a new project development without their agent's knowledge, there is no opportunity for the buyer's agent to prepare the buyer for this circumstance. The developer's agent is making business decisions that work for the developer and the business model they are retained under. In this instance, the buyer is still allowed to have their own agent but the

buyer is likely responsible for compensating the buyer's agent for representation if the buyer's agent did not accompany the buyer on the first visit to the project.

In real estate, "agency relationships" are created when one person agrees to act on another's behalf, or represent them in dealings with a third party. Once an agency relationship is established, agents owe their clients "fiduciary duties" of loyalty, disclosure, confidentiality, accounting, obedience and reasonable care. They are typically required to place their clients' interests ahead of their own, providing services with honesty and good faith while avoiding conflicts of interest or self-dealing.

While HAR believes H.B. 279 attempts to require developer's agent to accept a prospective buyer's agent, this is a matter that could be addressed through revisions to Hawaii's agency law.

HAR notes that the Purchase Contract contains information on agency disclosure and representation. **If the committee is inclined to move this measure out of committee, we respectfully request an effective date of November 1, 2015 to allow time for HAR's form revisions in conformance with this measure.**

Mahalo for the opportunity to testify.